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IN THE UNITED STATES PATENT
AND TRADEMARK OFFICE

In re: Anthony DILEO

Ser. No.: 10/784,330

Filed: February 23, 2004

For: FLUID DISPENSING APPARATUS HAVING MEANS
FOR MEASURING FLUID VOLUME CONTINUOUSLY

Group Art Unit: 3754

Examiner: P.M. Buechner

Billerica, Massachusetts 01821
September 10, 2004

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
Alexandria, Virginia 22313-1450

Sir:

A Written Restriction Requirement (Paper No. 20040817) mailed 08/23/2004 was received. Applicant's election of invention with traverse (Group I) and provisional election of species (Species A) is presented below.

Remarks

Restriction has been required between the claims of Group I "drawn to a fluid dispenser" (claims 1-6) and Group II "drawn to a dispensing cartridge" (claims 7-10). The Written Restriction Requirement states that the inventions of Group I and Group II are "distinct" in that they "are related as combination and subcombination." The Restriction states that "the combination as claimed does not require the particulars of the subcombination ... and ... the subcombination has utility by itself or in other combinations (MPEP § 806.05(c))."

Applicant respectfully requests favorable reconsideration of the restriction requirement and requests action on the merits of all of the claims of the subject application. Requirement for restriction is discretionary. It is the expressly stated policy of the PTO (M.P.E.P. 803) to examine all of the claims on the merits where the search and examination of an entire application can be made without serious burden. It is submitted that the claims of the respective groups can be conveniently examined without serious burden. Withdrawal of the restriction requirement is sought.

Regardless, in the interest of providing a full and proper response to the requirement, should the requirement become final, applicant hereby traverses the requirement by electing to prosecute the subject matter encompassed within Group I (claims 1-6) without prejudice to applicant's rights under the provisions of 37 C.F.R. § 1.144 and 35 U.S.C. § 121. Inventorship is unchanged despite the election.

In addition, the Written Restriction Requirement identifies as "patentably distinct" the following species: Species A (Figures 1 and 2); Species B (Figure 3); Species C (Figures 1 and 4); and Species D (Figures 1 and 5). Election of one is required by the examiner.

It is applicant's position that the species encompassed by the claims do not exceed an unreasonable number. Regardless, applicant hereby elects Species A. In accordance with 37 C.F.R. § 1.141, such election is made provisional upon the event that no generic claim is held allowable. It is submitted that each of claims 1-3 and 5-6 in Group I read on Species A.